## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA SOUTHWESTERN DIVISION

Dale Joseph Burke,	)
Plaintiff,	) ) ORDER ADOPTING REPORT
vs.	) AND RECOMMENDATION
North Dakota Department of Correction and Rehabilitation, et. al.,	) Case No. 1:12-cv-131
Defendants.	)

Before the Court is Plaintiff Dale Joseph Burke's "Motion for Preliminary Injunction." filed on February 12, 2014. See Docket No. 59. The matter was referred to Magistrate Judge Charles S. Miller for the issuance of a Report and Recommendation. The Defendants filed a response in opposition to the motion on February 26, 2014. See Docket No. 63. The Plaintiff filed a reply brief on March 6, 2014. See Docket No. 68. On March 18, 2014, Judge Miller issued a Report and Recommendation wherein he recommended that Burke's motion be denied. Both parties were given fourteen (14) days to object to the Report and Recommendation. On March 27, 2014, Burke filed an objection to the Report and Recommendation. See Docket No. 72.

In his motion, the Plaintiff contends a preliminary injunction is necessary because the Defendants are not providing him adequate treatment for his acid reflux disease. The Defendants respond that the medication the Plaintiff takes to control his acid reflux is not a life sustaining drug as the Plaintiff suggests and is available over-the-counter in the prison commissary. Nevertheless, it appears the Defendant was given a prescription for the medication in early February. It is clear the Plaintiff cannot show irreparable harm or a likelihood of success on the merits. A preliminary injunction is not warranted.

The Court has carefully reviewed the Report and Recommendations, relevant case law,

and the entire record, and finds the Report and Recommendations to be persuasive.

Accordingly, the Court ADOPTS both Report and Recommendation (Docket No. 70) in its

entirety and **DENIES** Burke's requests for a preliminary injunction. (Docket No. 59).

IT IS SO ORDERED.

Dated this 30th day of July, 2014.

<u>/s/ Daniel L. Hovland</u>

Daniel L. Hovland, District Judge United States District Court

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